

Claimant notes that the accident report form completed for the January 5, 2000, accident constitutes written claim. In the alternative, claimant notes that because a series of accidents was alleged from January 2000 through January 2001, there is timely written claim filed April 11, 2001.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant, Robert C. Karrick, has been employed as paper handler for respondent for approximately eight years. He prepares rolls of paper to push through the press which requires repetitive use of his upper extremities. He began experiencing problems with his arms and shoulders in January 2000.

In early January 2000, Karrick advised Mr. Charles Bennett, the night man in charge, that he was experiencing problems with his arms and needed to fill out an accident report form. Neither Karrick nor Mr. Bennett were able to locate an accident report form that evening. Karrick also asked the union steward, Alan Eenis, if he could provide an accident report form. Mr. Eenis was unable to locate a form that evening.

Karrick testified that he sought treatment that evening at the Riverside Hospital emergency room where x-rays were taken of his shoulders and neck. Karrick was advised to seek further treatment with his personal physician and ultimately was referred for treatment with Dr. Jay Stanley Jones, an orthopedic surgeon.

The following week Mr. Eenis advised Karrick that he had left an accident report form on the union bulletin board. Karrick went to the work site to obtain the form, which he completed and turned over to Mr. Bennett.

Mr. Bennett is a working member of the crew, assigns jobs and is in charge of personnel if the manager is not present. Mr. Bennett confirmed that Karrick had requested an accident report form because he had hurt himself. Mr. Bennett was unable to procure an accident report form because he did not have keys to the office. Mr. Bennett further testified that the following week he received the accident report form from Karrick and turned it in to the supervisor, Al Vogl.

Karrick testified that when he was notified that his workers compensation claim was denied, he met with Giselle Roy, the human resource manager for respondent, to find out why the claim was denied. Karrick was advised by Ms. Roy that an accident report form had not been received so at the meeting on May 17, 2000, they completed an accident report form together at that time. The form indicated that Karrick was alleging a single traumatic incident with a date of accident of January 5, 2000. Ms. Roy testified that upon receipt of the information from Karrick she immediately had a staff member set up medical so that Karrick could go ahead and be seen by a doctor. Although unclear from the record, it appears the insurance carrier again denied the claim before any treatment was provided by respondent.

Ms. Roy further testified that respondent's personnel file contained a statement prepared by Al Vogl that Karrick had not advised him that his shoulder condition was caused by work. Ms. Roy testified that respondent was first notified on May 17, 2000, about the January 5, 2000, alleged accident when Karrick came into her office and filled out the form. Ms. Roy further testified that a claim for compensation was received from the claimant on April 11, 2001, which alleged a date of accident from January 2000 and each and every working day through January 2001.

Lastly, Ms. Roy testified the respondent's internal accident form asks for information regarding when and how the injury occurred and whether medical treatment was sought at that time. It does not contain a specific request for workers compensation benefits.

Karrick continued treatment with Dr. Jones and ultimately surgery was performed on both arms. In August 2000, he was released to return to work with no restrictions. He returned to the same job duties with respondent from August 2000 through January 2001. After his return to work, Karrick testified that over time the physical condition of his upper extremities, shoulder and neck worsened.

Karrick did not advise the respondent that he had continued pain and problems with his arms or shoulders after he returned to work in August 2000. Karrick sustained a knee injury in January 2001 and was taken off work due to that injury.

In April 2001, Karrick sought additional treatment with Dr. Jones for his upper extremity complaints. On April 20, 2001, Dr. Jones signed a report prepared by Karrick's counsel which stated that Karrick's work for respondent caused and/or aggravated the symptomatology Karrick is experiencing in both upper extremities necessitating the treatment the doctor has provided since January 2000. The report concluded with the doctor's opinion that Karrick's daily work activities through January 2001, continued to aggravate his condition necessitating treatment.

Respondent notes that it is undisputed that Karrick filed a written claim for compensation with the respondent on April 11, 2001. The accident report for the January 5, 2000, incident was filed with the Division of Workers Compensation on May 24, 2000. Respondent contends that the 200-day written claim time period expired on December 3, 2000, for the January 5, 2000, accident.

Respondent further contends that Dr. Jones' report that Karrick continued to aggravate his condition at work until January 2001 is contradicted by the facts. Respondent notes that Karrick returned to work without restrictions and neither complained of pain nor sought medical treatment for his upper extremities until April 2001. Respondent notes that Karrick had been off work since January 2001 for a different injury and so had not worked for approximately three months before he sought additional treatment with Dr. Jones. Lastly, respondent argues, in the alternative, that if Karrick was injured after he

returned to work in August 2000, he sustained a new injury and has not given notice for an aggravation of his preexisting condition.

Karrick contends that timely notice of the January 2000 accident was provided to Mr. Bennett, who was in charge at the time. Secondly, he notes that because he alleged and sustained a series of accidents through January 2001, written claim was timely. Lastly, he contends that the written documentation, respondent's internal accident report form, constituted written claim and was provided to the respondent initially in January 2000 and subsequently provided to the human resources manager in May 2000.

The respondent's brief concedes that Karrick provided timely notice of his accident in January 5, 2000 when he informed Mr. Bennett that he needed to fill out the accident report form because he had been injured.

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it. *Craig v. Electrolux Corporation*, 212 Kan. 75, 82, 510 P.2d 138 (1973). The same purpose or function has, of course, been ascribed to the requirement for notice found in K.S.A. 44-520. *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978). Written claim is, however, one step beyond notice in that it requires an intent to ask the employer to pay compensation. In *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 166, 309 P.2d 681 (1957), the Kansas Supreme Court described the test as follows:

In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

The accident report form Karrick completed with the human resource manager on May 17, 2000, contained a description of the accident and injury. Certainly, it satisfied the purpose of allowing respondent the opportunity to investigate. Karrick had arranged the meeting with the human resource manager to determine why his claim was being denied. When advised that the accident report form had not been received and needed to be completed it was clearly Karrick's intention to pursue workers compensation benefits when he completed the form.

Upon a review of the evidentiary record compiled to date, it is the Board's determination that Karrick filed timely written claim for the January 5, 2000, accident when he completed the accident report form on May 17, 2000, with the assistance of respondent's human resource manager. However, this accident was described by claimant as a single traumatic incident.

When Karrick returned to work in August 2000, Dr. Jones had released him without restrictions and he returned to his regular job duties. Karrick never advised respondent that he was having continued problems nor did he seek additional medical treatment. After Karrick was taken off work in January 2001, due to his knee injury, it was not until April 2001 that he sought additional treatment for his upper extremities. On April 20, 2001, Dr. Jones signed a statement that Karrick's daily work activities up through and including January 2001, continued to aggravate his condition necessitating the treatment the doctor was providing.

As respondent contends, aggravation of a preexisting condition constitutes a new injury. As previously noted, Karrick never notified respondent that he was experiencing any problems after his return to work in August 2000. Karrick has failed to provide timely notice regarding this new alleged repetitive trauma accident.

It is the Board's determination that Karrick provided timely notice and written claim for his work-related accident of January 5, 2000. However, he failed to provide timely notice of the alleged series of accidents following his return to work from August 2000 through January 2001. Accordingly, the decision of the Administrative Law Judge is affirmed regarding timely notice and written claim for the January 5, 2000, work-related accident and reversed regarding timely notice for the alleged series of accidents through January 2001. Because Dr. Jones' opinion indicated the continued treatment was necessitated by aggravation of the preexisting condition, the award of medical benefits is reversed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated May 17, 2001, is affirmed as to timely notice and written claim for the January 5, 2000, accident and reversed regarding timely notice of the alleged series of accidents through January 2001.

IT IS SO ORDERED.

Dated this _____ day of July 2001.

BOARD MEMBER

c: David H. Farris, Attorney, Wichita, Kansas
Lyndon W. Vix, Attorney, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Workers Compensation Director